

**Statement of
Robert L. Crandall, on Behalf of
Citizens Against Rail Expansion in Florida (CARE FL)
Before the
House Committee on Oversight and Government Reform
Subcommittee on Government Operations
Hearing on
All Aboard Florida/Brightline
Thursday, April 19, 2018**

Chairman Meadows, Ranking Member Connolly and Members of the Subcommittee, thank you for inviting me to testify today on the All Aboard Florida passenger rail project. My name is Robert Crandall. I am the former Chairman of American Airlines and now live in the Treasure Coast region of Florida. I have served on the Steering Committee of Citizens Against Rail Expansion in Florida (CARE FL) since 2014.

CARE FL is a coalition of Treasure Coast community leaders, organizations, and residents devoted to protecting the safety, welfare and way of life of the more than 10 million people living in and around the areas that will be impacted by Phase II of the AAF project. All Aboard Florida proposes to run 32 new passenger train crossings per day up Florida's highly populated east coast at speeds of up to 110 mph. CARE FL opposes Phase II of the AAF project, which would run from West Palm Beach to Orlando—directly through the communities CARE FL represents.

Today, I am here to answer a straightforward question: Should this project be subsidized by federal taxpayers? CARE FL believes the answer to this question is “NO”—for three reasons. First, the U.S. DOT's allocation of \$1.15 billion in private activity bonds (PABs) to All Aboard Florida is improper, unlawful, and in direct contravention of congressional intent. Second, because All Aboard Florida is inherently unsafe if operated at

the intended speed and finally, because in CARE FL's judgment, the project cannot be financially successful and could become a continuing taxpayer burden.

I will leave the discussion of the project's serious safety concerns to my fellow panelist, Chief Dan Wouters from Martin County. Dylan Reingold of Indian River County will address the issue of safety costs being foisted on the local communities. I'd like to spend the next few minutes addressing the PABs and add a final word on financial viability.

All Aboard Florida portrays itself as a private enterprise, but in reality, **AAF has an insatiable desire for taxpayer subsidized financing and is unlikely to be able to finance its project without it.** In August 2016, a U.S. District Court ruling on a prior DOT allocation of \$1.75 billion in PABs to All Aboard Florida cited "legitimate questions" about All Aboard Florida's commitment to completing the project without PABs. The court stated: "First of all, PAB-based financing is not just the 'current financing plan' for the project—it appears to be the *only* financing plan."¹ I ask that this ruling be made a part of this hearing record, as read.

As a result of litigation brought by Martin County, Indian River County, and CARE FL members, DOT withdrew the \$1.75 billion PAB allocation to AAF in November 2016. Immediately thereafter, DOT approved a \$600 million PAB allocation for use only on AAF Phase I (to replace very expensive debt issued earlier by AAF). Subsequently, on December 20, 2017 All Aboard Florida sought an additional PAB allocation of \$1.15 billion for use on Phase II. Not coincidentally, those two PAB allocations—\$600 million for Phase I and \$1.15 billion for Phase II—equal the same amount as the \$1.75 billion PAB allocation that AAF sought in 2014, and that was later withdrawn in 2016.

¹ See page 9 of August 16, 2016 Memorandum Opinion from U.S. District Judge Christopher R. Cooper

PABs are not cost-free to the U.S. government. U.S. taxpayers foot the bill when the U.S. government treats PABs as tax-exempt. As the U.S. District Court highlighted in its August 2016 opinion, an economist found that the cost to taxpayers of the originally sought \$1.75 billion PAB allocation would be up to \$600 million over the first 10 years.²

More importantly, the U.S. DOT does not have the statutory authority to allocate PABs for this type of passenger rail project. This is evidenced by a straightforward reading of the Internal Revenue Code provision governing PABs and its legislative history.

The Internal Revenue Code allows the issuance of tax-exempt PABs to finance a project only if it falls into one of 15 specified categories.³ A “high-speed intercity rail facility” would qualify if its trains are capable of traveling at speeds of more than 150 miles per hour, but AAF clearly does not qualify as “high speed” because its maximum speed is expected to be no greater than 125 miles per hour. No one—not even AAF or DOT—disputes the fact that an AAF train cannot achieve 150 miles per hour and therefore is not considered “high speed” under the statute. That should have been the end of the story.

Unhappily, DOT has chosen to approve PAB allocations for the AAF project based on the theory that it is a “qualified highway or surface freight transfer facility.”⁴ But AAF is a passenger railroad. It is neither a highway nor a freight transfer facility.

² See page 26 of August 16, 2016 Memorandum Opinion from U.S. District Judge Christopher R. Cooper

³ The 15 categories are: “(1) airports, (2) docks and wharves, (3) mass commuting facilities, (4) facilities for the furnishing of water, (5) sewage facilities, (6) solid waste disposal facilities, (7) qualified residential rental projects, (8) facilities for the local furnishing of electric energy or gas, (9) local district heating or cooling facilities, (10) qualified hazardous waste facilities, (11) *high-speed intercity rail facilities*, (12) environmental enhancements of hydroelectric generating facilities, (13) qualified public educational facilities, (14) qualified green building and sustainable design projects, or (15) *qualified highway or surface freight transfer facilities*.” 26 U.S.C. § 142(a) (emphasis added).

⁴ 26 U.S.C. § 142(a)(15) and (m) defines “qualified highway or surface freight transfer facilities” as follows: “(A) any surface transportation project which receives Federal assistance under title 23, [United States](#) Code (as in effect on the date of the enactment of this subsection), (B) any project for an international bridge or tunnel for which an international [entity](#) authorized under Federal or State law is responsible and which receives Federal assistance under title 23, [United States](#) Code (as so in effect), or (C) any facility for the transfer of freight from truck to rail or rail to

Nonetheless, DOT has allocated \$1.15 billion—the largest PAB allocation to date—to the AAF project, claiming that AAF can be considered a “highway” under the statute because, years ago, the Florida Department of Transportation spent \$9 million in Title 23 highway funds to improve highway-rail crossings on the separately owned Florida East Coast Railway (FECR) corridor in which AAF will run. DOT has bonded out an entire passenger rail project based on the fact that a few Title 23 highway dollars were used in years past to improve highway-rail intersections.

This interpretation is clearly at odds with what Congress intended. In 2005, when considering the SAFETEA-LU transportation bill, Congress enacted Section 142(m) to add new types of projects to the then existing list of categories eligible for tax exempt PAB allocations. When doing so, Congress **intentionally omitted** lower speed passenger rail projects from the list of eligible projects, presumably due to fiscal concerns. Congress never intended to hand the Executive Branch a blank check for non-qualified projects, and DOT’s actions are a blatant and contemptuous attempt to circumvent the statute.

In the years that followed the enactment of SAFETEA-LU, there were several occasions on which the Obama Administration or individual Members of Congress proposed to amend the statute to include passenger rail projects that do not meet the current “high speed” definition of 150 mph. None of these proposals were ever enacted, but the fact that they were proposed is a clear admission that the authority was not granted under SAFETEA-LU. Your former colleague, West Virginia Congressman Nick Rahall (D-WV)—the longest serving Member of the Transportation and Infrastructure Committee in

truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, [United States](#) Code (as so in effect).”

the history of the committee—set forth these facts in a 2015 declaration, detailing how it was not Congress’ intent to do so. I ask that his declaration also be made a part of this hearing record as read.

Further, on February 12, 2018, the Trump Administration released its Infrastructure Plan, which contradicts DOT’s theory that passenger railroads are highways. The Plan proposes a “modified description” of 142(m) to include passenger railroads.⁵ Again, this appears to be an admission that the current Administration knows it does not have the authority under current law to bond out a passenger rail project as a highway. DOT is deliberately subverting the rule of law by doing so.

In closing, I’d also like to comment on AAF’s projected finances. The project’s financial success is dependent on selling enough tickets at an appropriate price to generate enough revenue to cover its costs. In 2013, a ridership and revenue study prepared by the Louis Berger Group—a firm that, incidentally, has been debarred by the World Bank and has pled guilty to conspiring to defraud the U.S. AID – prepared ridership and revenue predictions for AAF. In 2017 the same firm prepared an updated study in support of AAF’s most recent PAB application.

The new study is wildly more optimistic than the 2013 version. The 2013 expected average fare of \$15.71 has more than doubled to \$32.70 while the number of passengers has increased from 1.94 million to 2.94 million. Using these assumption, the 2017 study projects 2020 revenue of \$96 million, 3 times the amount projected in 2013. In my former life, as Chairman of American Airlines, I would have paid slight attention to anyone who

⁵ “qualified surface transportation facilities, including roads, bridges, tunnels, **passenger railroads**, surface freight transfer facilities, and other facilities that are eligible for Federal credit assistance under title 23 or 49 (i.e., qualified projects under TIFIA) (existing category with modified description).” (emphasis added)

brought me numbers suggesting that doubling our fares would drive a 52% increase in passengers and a tripling of revenue. Despite their implausibility, these projections are the basis for the marketing of the PABs and the success of All Aboard Florida's passenger trains. In November 2017, Indian River County, Martin County and CARE FL submitted a detailed letter addressing these concerns to Florida's Joint Legislative Auditing Committee (JLAC). I would like to submit that letter for the record, as read.

Mr. Chairman, I know that fiscal responsibility is important to you and the other Members of this Committee on both sides of the aisle. The Subcommittee's role is to oversee the operations of the federal government. In this instance, I think the government is authorizing improper financing and thus misusing taxpayer dollars on behalf of an inherently unsafe and likely unsuccessful venture. I am glad you are watching and hope you will decide to end this debacle.